120-479

ED STATES.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1100.

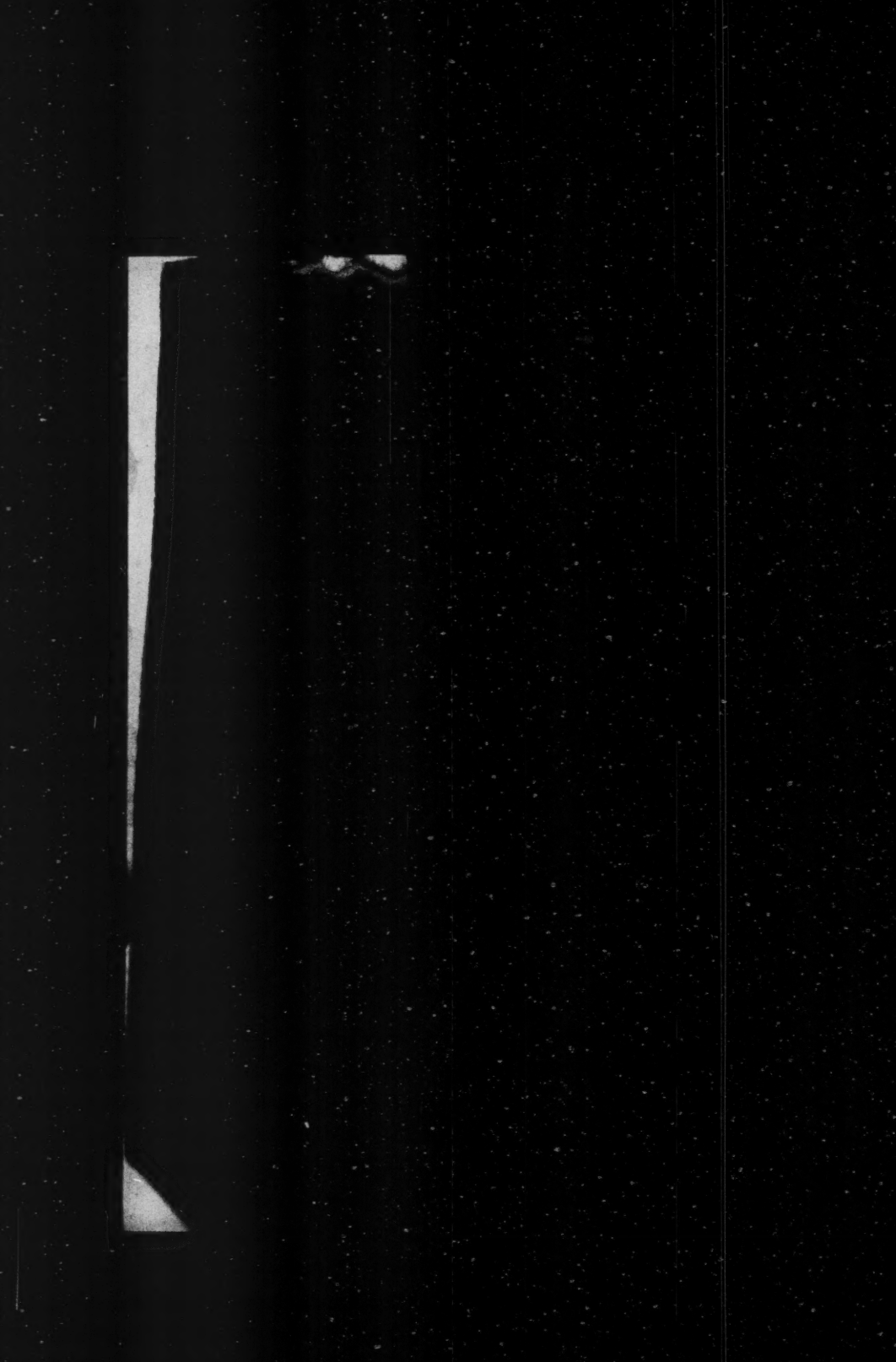
THE UNITED STATES, PLAINTIFF,

vs.

RAMON ARJONA.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 9, 1886.



SUPREME COURT OF THE UNITED STATES.

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No. 1100.

THE UNITED STATES, PLAINTIFF,

vs.

RAMON ARJONA.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 Circuit court of the United States of America for the southern district of New York, in the second circuit.

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, begun and held in the city of New York, within and for the district and circuit aforesaid, on the second Wednesday of March, in the year of our Lord one thousand eight hundred and eighty-six, and continued by adjournment to and including the eleventh day of May, in the year of our Lord one thousand eight hundred and eighty-six—

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The jurors of the United States of America within and for the district and circuit court aforesaid, on their oath present that Ramon Arjona, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the first day of April, in the year of our Lord one thousand eight hundred and eighty-six, at the southern district of New York, and within the jurisdiction of this court, unlawfully and with intent to defraud and without lawful authority, did have in his control and custody a certain metallic plate from which there might then and there be printed in part a counterfeit note in the likeness and
2 similitude in part of the notes therefore issued by a foreign bank, to wit, the bank known as El Banco del Estado de Bolivar, which said bank was then and there a bank authorized by the laws of a foreign State, to wit, the State of Bolivar, said State being then and there one of the States of the United States of Columbia, against the peace of the United States and their dignity, and contrary to the form of the statute of the said United States in such case made and provided.

3 *Second count.*

And the jurors aforesaid, on their oath aforesaid, do further present, that Ramon Arjona, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the first day of April, in the year of our Lord one thousand eight hundred and eighty-six, at the southern district of New York, and within the jurisdiction of this court, unlawfully and with intent to defraud, and without lawful authority, did cause and procure to be engraved a certain metallic plate in the likeness and similitude of a plate designated for the printing of the genuine issues of the obligations of a foreign bank, that is to say, of the bank notes of the bank known as El Banco del Estado de Bolivar, the same being then and there a bank authorized by the laws of a foreign State, to wit, the State of Bolivar, said state being then and there one of the States of the United States of Columbia, against the peace of the United States and their dignity, and contrary to the form of the statute of
4 the said United States in such case made and provided.

5 *Third count.*

And the jurors aforesaid, on their oath aforesaid, do further present, that Ramon Arjona, late of the city and county of New York, in the dis-

trict and circuit aforesaid, yeoman, heretofore, to wit, on the first day of April, in the year of our Lord one thousand eight hundred and eighty-six, at the southern district of New York, and within the jurisdiction of this court, unlawfully and with intent to defraud, did cause and procure to be falsely made a certain note in the similitude and resemblance of the notes theretofore issued by a bank of a foreign country, to wit, the bank known as El Banco del Estado de Bolivar, the same being then and there a bank authorized by the laws of one of the States of the United States of Columbia, that is to say, the State of Bolivar, and the notes issued by the said bank being then and by the usage of the said State of Bolivar intended to circulate as money, against the peace of the United States and their dignity, and contrary to the form of the statute of the said United
6 States in such case made and provided.

STEPHEN A. WALKER,
United States Attorney.

7 (Indorsement:) U. S. circuit court. The United States of America vs. Ramon Arjona. Indictment. Counterfeiting plate of a note of a foreign bank. U. S. Rev. St., vol. 23, Stat. at Large, chap. 52, §§ 3 & 6. Stephen A. Walker, U. S. district attorney. A true bill. T. F. Jeremiah, foreman. U. S. circuit court. Filed May 11, 1886. Timothy Griffith, clerk.

8 *Counterfeiting plate of a note of a foreign bank.*

THE UNITED STATES }
vs.
RAMON ARJONA. }

1886.
May 11. Filed indictment.
" " Entered order for and issued bench warrant.
" 12. Def't files demurrer in open court and the United States attorney joins issue.
June 9. Demurrer submitted on both sides upon briefs.
Sept. 28. Filed certificate of division.

9 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, begun and held at the United States court rooms in the city of New York, on the twenty-seventh of September, in the year of our Lord one thousand eight hundred and eighty-six—

Present, the honorable William J. Wallace, the honorable Charles L. Benedict, judges.

THE UNITED STATES }
vs.
RAMON ARJONA. }

This case coming on to be heard at this term upon the demurrer interposed to the indictment before the two judges above mentioned, at such hearing the following questions occurred:

10 First. Whether the third section of the act of May 16, 1884, entitled "An act to prevent and punish the counterfeiting within the

United States of notes, bonds, or other securities of foreign Governments," which prescribes and punishes as an offense "the false making, forging, or counterfeiting, within the United States, with intent to defraud, or knowingly assisting therein, of any bank note or bill issued by a bank or other corporation of any foreign country, and intended by the law or usage of any such foreign country to circulate as money, such bank or corporation being authorized by the laws of such country," is constitutional as being within the legislative powers conferred upon the Congress of the United States by the Constitution thereof?

Second. Whether the sixth section of the act of May 16, 1884, entitled "An act to prevent and punish the counterfeiting within the United States of notes, bonds, or other securities of foreign Government,"
11 which prescribes and punishes as an offense, "having within the United States any plate, or part thereof, from which has been, or may be, printed any counterfeit note, bond, or other security, of any foreign Government, bank, or corporation, except by lawful authority, or using or permitting the same to be used in counterfeiting such foreign obligations. or engraving or causing to be engraved any plate in the likeness or similitude of any plate designed for the printing of the genuine issues of any foreign Government, bank, or corporation, or making, or causing to be made, any engraving or print in the likeness of any genuine note, bond, or other security, or any part thereof, of any foreign Government, bank, or corporation, or bringing any such plate or engraving into the United States," so far as the same relates to "foreign banks or corporations" is constitutional as being within the legislative powers conferred upon the Congress of the United States by the Constitution thereof?

12 Third. Whether the counterfeiting within the United States of the notes of a foreign bank or corporation can be constitutionally made by Congress an offense against the law of nations?

Fourth. Whether the counterfeiting within the United States of the notes of a foreign bank or corporation can be constitutionally made by Congress an offense against the law of nations unless it appears or is alleged in the indictment that the notes of said foreign bank or corporation are the notes or money of issue of a foreign Government, prince, potentate, or power?

Fifth. Whether the obligations of the law of nations, as referred to in the Constitution of the United States, include the punishment of counterfeiting the notes of a foreign bank or corporation, as mentioned and described in the third section of the act of May 16, 1884, hereinbe-
13 fore referred to, unless it appear or is alleged in the indictment that the notes of said foreign bank or corporation are the notes or money of issue of a foreign Government, prince, potentate, or power?

Sixth. Whether the obligations of the law of nations, as referred to in the Constitution of the United States, include the punishment of having in possession a plate from which may be printed counterfeits of the notes of a foreign bank or corporation, as mentioned and described in the sixth section of the act of May 16, 1884, hereinbefore referred to, unless it appear or is alleged in the indictment that the notes of said foreign bank or corporation are the notes or money of issue of a foreign Government, prince, potentate, or power?

Seventh. Whether any authority whatever is to be found in the Constitution for the enacting by Congress of the legislation comprised
14 within the third section of the act of May 16, 1884, hereinbefore referred to, so far as the same relates to the counterfeiting of the notes of a foreign bank or corporation, unless it appear or is alleged in the indictment that the notes of said foreign bank or corporation are the notes or money of issue of a foreign Government, prince, potentate, or power?

Eighth. Whether any authority whatever is to be found in the Constitution for the enacting by Congress of the legislation comprised within the sixth section of the act of May 16, 1884, hereinbefore referred to, so far as the same relates to the having in possession a plate from which may be printed counterfeits of the notes of a foreign bank or corporation, unless it appear or is alleged in the indictment that the notes of said foreign bank or corporation are the notes or money of issue of a foreign Government, prince, potentate, or power?

15 Ninth. Whether, if the Congress of the United States is vested by the Constitution thereof with power to so define the law of nations as to include within its provisions such an offense as counterfeiting or forging the notes of a foreign bank or corporation, as prescribed in the third section of the act of May, 16, 1884, where it does not appear and is not alleged in the indictment that such notes are the notes or money of issue of a foreign Government, prince, potentate, or power, it is not necessary, in order to "define" the offense that by apt terms employed in the statute itself it must be declared to be an offense against the law of nations?

Tenth. Whether, if the Congress of the United States is vested by the Constitution thereof with power to so define the law of nations as to include within its provisions such an offense as having in possession a plate from which may be printed counterfeits of the notes of a foreign bank or corporation, as prescribed in the sixth section of the act of May
16 16, 1884, where it does not appear and is not alleged in the indictment that such notes are the notes or money of issue of a foreign Government, prince, potentate, or power, it is not necessary, in order "to define" the offense, that it must be in the statute itself declared to be an offense against the law of nations?

Eleventh. Whether the indictment herein is sufficient in law?

Wherefore at the same term, upon request of the United States attorney, they have caused the points above stated to be certified under the seal of this court, together with a copy of the indictment, and an abstract of the record to the Supreme Court of the United States for final decision according to law.

WM. J. WALLACE.
CHAS. L. BENEDICT.

(Endorsed:) United States circuit court, so. dist. N. Y. U. S. of
17 America vs. Ramon Arjona. Certificate of division. U. S. circuit court. Filed Sept. 28, 1886. Timothy Griffith, clerk.

18 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to seventeen, inclusive, contain a true and complete transcript of the certificate of division, the indictment, and an abstract of the record in the matter of the United States of America against Ramon Arjona, as the same remain of record and on file in the said office.

In testimony whereof I have caused the seal of said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this sixth day of October, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the said United States the one hundred and eleventh.

[SEAL.] TIMOTHY GRIFFITH,
Clerk.

(Indorsement on cover:) No. 1100. The United States vs. Ramon Arjona. S. New York C. C. U. S. Filed October 9, 1886.

120-419

Supreme Court of the United States.

THE UNITED STATES,

Plaintiff,

against No. 1100.

RAMON ARJONA,

Defendant.

PETITION AND AFFIDAVITS

To advance case on the Calendar on the ground that the Defendant is in actual confinement and is ill.

WINGATE & CULLEN,
Defendant's Attorneys,
No. 20 Nassau Street,
New York City.

GEORGE W. WINGATE,
AUGUSTUS A. LEVEY,
Of Counsel for Defendant.

Supreme Court of the United States. 1

THE UNITED STATES,
Plaintiff,

vs.

RAMON ARJONA,
Defendant.

Petition.

To the Supreme Court of the United States:

2

The petition of Ramon Arjona respectfully shows:

That on or about the 10th day of April, 1886, he was arrested by the United States authorities on a charge of having procured to be engraved a metallic plate in the likeness and similitude of a plate designed for the printing of the genuine obligations of a foreign bank known as El Banco del Estado de Bolivar, a bank authorized by the laws of the State of Bolivar, one of the United States of Colombia, and also of having made a certain note in similitude and resemblance of notes issued by such bank. That on May 11, 1886, he was 3
indicted by the Grand Jury of the Circuit Court of the United States for the Southern District of New York in the Second Circuit, for such alleged offenses, and a bench warrant was issued on such date. That on May 12, his counsel filed a demurrer in open court, to which the United States Attorney joined issue, which demurrer was, on June 9, submitted, and on September 28 a certificate of division was duly filed by the Court; that it has been transmitted to this Court, and the action is now Number 1100 upon the October Term Calendar thereof.

4 Your petitioner further represents that he has been continually in the custody of the United States authorities in the Ludlow Street Jail, in the City of New York, since the 10th day of April, the day of his said arrest. That the amount of bail fixed in his case is the sum of $7,500; that he has very few friends in this country, and is poor, and it is utterly impossible for him to procure any such amount of bail, or, in fact, any bail beyond a nominal amount.

5 Your petitioner further represents that during the entire period of his confinement he has been sick and under the constant treatment of a physician; that he is now suffering from malarial fever, and being a native of the tropical portion of South America, his confinement in a jail is exceedingly detrimental to him. That he is advised by his counsel and verily believes that the indictment in question does not charge any offense against him, and that he is improperly confined.

6 Wherefore he prays that the Court will advance his case upon its calendar so that it may be disposed of without further delay, to the end that he may receive his liberty, if it should be decided that he is guiltless of any offense.

And your petitioner will ever pray, etc.

RAMON ARJONA.

Southern District of New York, *ss.*:

7 Ramon Arjona, being duly sworn, says, I am the petitioner above named. The foregoing petition is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

RAMON ARJONA.

Sworn to before me this 13th day of November, 1886.

JAMES P. KEATING,
Notary Public,
New York County.

[L. S.]

SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES,
Plaintiff,

vs.

RAMON ARJONA,
Defendant.

Marshal's Affidavit.

Southern District of New York, *ss.*:

George Jeffrey, being duly sworn, says: I am the Deputy Marshal of the United States for the Southern District of New York, having charge of the Criminal Department of that office. Ramon Arjona, the defendant in the above-entitled action, was arrested by me on April 10, 1886, and has been since that date in my custody in close confinement as a prisoner in Ludlow Street Jail in the City of New York. The bail fixed by the Commissioner was $7,500. He has, apparently, been sick during almost the entire time he has been in my custody, and, in my judgment, is now in impaired health.

GEORGE JEFFREY,
Deputy U. S. Marshal.

Sworn to before me, this 15th day of November, 1886,

HERMAN W. SCHMITZ,
Notary Public,
Kings County.

Cert. in N. Y. County.

12 SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES,
Plaintiff.

vs.

RAMON ARJONA,
Defendant.

Physician's Affidavit.

13

Southern District of New York, *ss.*:

George A. Church, being duly sworn, says: I am a physician connected with the Jail in the City of New York Ramon Arjona, who is one of the prisoners therein, has been under my treatment since June 1, 1886. He is suffering from malarial fever and other diseases, and his confinement, if continued, will be very prejudicial to his health.

14

GEORGE A. CHURCH, M. D.

Sworn to before me this 16th day of November, 1886.

JAMES P. KEATING,
Notary Public,
New York Co.

120-479

Office Supreme Court U. S.
FILED.
DEC 31 1886
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

THE UNITED STATES PLAINTIFF,
vs.
RAMON ARJONA.
} No. 1100.

ON CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFF.

In the Supreme Court of the United States.

THE UNITED STATES, PLAINTIFF,
vs.
RAMON ARJONA. } No. 1100.

ON CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFF.

Arjona was indicted in the court below for violating the act of May 16, 1884, *to prevent and punish the counterfeiting within the United States of notes, bonds, or other securities of foreign Governments.* (Pamph. Acts, 1st sess. 48th Cong., p. 22 *et seq.*) A demurrer was filed by the defendant, and the judges, dividing in opinion as to the questions raised, certified them to this court.

For convenience the indictment and the questions certified will be presented here in full from the record:

INDICTMENT.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The jurors of the United States of America within and for the district and circuit court aforesaid, on

their oath present that Ramon Arjona, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the first day of April, in the year of our Lord one thousand eight hundred and eighty-six, at the southern district of New York, and within the jurisdiction of this court, unlawfully and with intent to defraud and without lawful authority, did have in his control and custody a certain metallic plate from which there might then and there be printed in part a counterfeit note in the likeness and similitude in part of the notes theretofore issued by a foreign bank, to wit, the bank known as El Banco del Estado de Bolivar, which said bank was then and there a bank authorized by the laws of a foreign state, to wit, the State of Bolivar, said state being then and there one of the States of the United States of Colombia, against the peace of the United States and their dignity, and contrary to the form of the statute of the said United States in such case made and provided.

Second count.

And the jurors aforesaid, on their oath aforesaid, do further present, that Ramon Arjona, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the first day of April, in the year of our Lord one thousand eight hundred and eighty-six, at the southern district of New York, and within the jurisdiction of this court, unlawfully and with intent to defraud, and without lawful authority, did cause and procure to be engraved a certain metallic plate in the likeness and similitude of a plate designated for the printing of the genuine issues of the obligations of a foreign bank, that is to say, of the bank notes of the bank known as El Banco del Estado de Bolivar, the same being

then and there a bank authorized by the laws of a foreign state, to wit, the State of Bolivar, said state being then and there one of the States of the United States of Colombia, against the peace of the United States and their dignity, and contrary to the form of the statute of the said United States in such case made and provided.

Third count.

And the jurors aforesaid, on their oath aforesaid, do further present that Ramon Arjona, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the first day of April, in the year of our Lord one thousand eight hundred and eighty-six, at the southern district of New York, and within the jurisdiction of this court, unlawfully and with intent to defraud, did cause and procure to be falsely made a certain note in the similitude and resemblance of the notes theretofore issued by a bank of a foreign country, to wit, the bank known as El Banco del Estado de Bolivar, the same being then and there a bank authorized by the laws of one of the States of the United States of Colombia, that is to say, the State of Bolivar, and the notes issued by the said bank being then and by the usage of the said State of Bolivar intended to circulate as money, against the peace of the United States and their dignity, and contrary to the form of the statute of the said United States in such case made and provided.

STEPHEN A. WALKER,
United States Attorney.

QUESTIONS CERTIFIED.

First. Whether the third section of the act of May 16, 1884, entitled "An act to prevent and punish the counterfeiting within the United States of notes, bonds, or other securities of foreign Governments," which prescribes and punishes as an offense "the false making, forging, or counterfeiting within the United States, with intent to defraud, or knowingly assisting therein, of any bank note or bill issued by a bank or other corporation of any foreign country, and intended by the law or usage of any such foreign country to circulate as money, such bank or corporation being authorized by the laws of such country," is constitutional as being within the legislative powers conferred upon the Congress of the United States by the Constitution thereof?

Second. Whether the sixth section of the act of May 16, 1884, entitled "An act to prevent and punish the counterfeiting within the United States of notes, bonds, or other securities of foreign Governments," which prescribes and punishes as an offense, "having within the United States any plate, or part thereof, from which has been, or may be, printed any counterfeit note, bond, or other security of any foreign Government, bank, or corporation, except by lawful authority, or using or permitting the same to be used in counterfeiting such foreign obligations, or engraving or causing to be engraved any plate in the likeness or similitude of any plate designed for the printing of the genuine issues of any foreign Government, bank, or corporation, or making, or causing to be made, any engraving or print in the likeness of any genuine note, bond, or other security, or any part thereof, of any foreign Government, bank, or corporation, or bringing any such plate or engraving into

the United States," so far as the same relates to "foreign banks or corporations" is constitutional as being within the legislative powers conferred upon the Congress of the United States by the Constitution thereof?

Third. Whether the counterfeiting within the United States of the notes of a foreign bank or corporation can be constitutionally made by Congress an offense against the law of nations?

Fourth. Whether the counterfeiting within the United States of the notes of a foreign bank or corporation can be constitutionally made by Congress an offense against the law of nations unless it appears or is alleged in the indictment that the notes of said foreign bank or corporation are the notes or money of issue of a foreign Government, prince, potentate, or power?

Fifth. Whether the obligations of the law of nations, as referred to in the Constitution of the United States, include the punishment of counterfeiting the notes of a foreign bank or corporation, as mentioned and described in the third section of the act of May 16, 1884, hereinbefore referred to, unless it appear or is alleged in the indictment that the notes of said foreign bank or corporation are the notes or money of issue of a foreign Government, prince, potentate, or power?

Sixth. Whether the obligations of the law of nations, as referred to in the Constitution of the United States, include the punishment of having in possession a plate from which may be printed counterfeits of the notes of a foreign bank or corporation, as mentioned and described in the sixth section of the act of May 16, 1884, hereinbefore referred to, unless it appear or is alleged in the indictment that the notes of said foreign bank or corporation are the notes or money of issue of a foreign Government, prince, potentate, or power?

Seventh. Whether any authority whatever is to be found in the Constitution for the enacting by Congress of the legislation comprised within the third section of the act of May 16, 1884, hereinbefore referred to, so far as the same relates to the counterfeiting of the notes of a foreign bank or corporation, unless it appear or is alleged in the indictment that the notes of said foreign bank or corporation are the notes or money of issue of a foreign Government, prince, potentate, or power?

Eighth. Whether any authority whatever is to be found in the Constitution for the enacting by Congress of the legislation comprised within the sixth section of the act of May 16, 1884, hereinbefore referred to, so far as the same relates to the having in possession a plate from which may be printed counterfeits of the notes of a foreign bank or corporation, unless it appear or is alleged in the indictment that the notes of said foreign bank or corporation are the notes or money of issue of a foreign Government, prince, potentate, or power?

Ninth. Whether, if the Congress of the United States is vested by the Constitution thereof with power to so define the law of nations as to include within its provisions such an offense as counterfeiting or forging the notes of a foreign bank or corporation, as prescribed in the third section of the act of May 16, 1884, where it does not appear and is not alleged in the indictment that such notes are the notes or money of issue of a foreign Government, prince, potentate, or power, it is not necessary, in order to "define" the offense, that by apt terms employed in the statute itself it must be declared to be an offense against the law of nations?

Tenth. Whether, if the Congress of the United States is vested by the Constitution thereof with power to so define the law of nations as to include

within its provisions such an offense as having in possession a plate from which may be printed counterfeits of the notes of a foreign bank or corporation, as prescribed in the sixth section of the act of May 16, 1884, where it does not appear and is not alleged in the indictment that such notes are the notes or money of issue of a foreign Government, prince, potentate, or power, it is not necessary, in order "to define" the offense, that it must be in the statute itself declared to be an offense against the law of nations?

Eleventh. Whether the indictment herein is sufficient in law?

It is apparent then that the life of this act of Congress of May 16, 1884, is seriously threatened and is in peril, but like all acts of Congress, it comes before this court with every presumption in its favor.

Though the question of itself is a novel one, yet the act can well be sustained beyond the mere presumption in its favor, and it is submitted the process by which this can be done is not difficult.

The power to punish the "counterfeiting the securities and current coin of the United States" is expressly given by the Constitution (C. U. S., art. 1, § 8, cl. 6), but it is true there is no express grant of power to punish the counterfeiting of the securities of foreign Governments or nations. And if this latter power exists it is an implied one. From what provision of the Constitution then is it derived, or in what grant under the Constitution is it implied? Congress has power "to define and punish piracies and felonies committed on the high seas, *and offenses against the law of nations.*" (C. U. S., art. 1, § 8, cl. 10.)

Can the acts described in this law be defined and punished as offenses against the law of nations? And that question depends on another: Are such acts offenses against the law of nations?

"The law of nations," as used in this clause, is obviously what is now known among publicists as international law; in other words, what the Constitution termed the law of nations, or *jus gentium*, is now termed the *jus inter gentes*, or international law.

Whatever, therefore, may be regarded as an offense against the law which regulates the just relations between nations, may be defined and punished as an offense against the law of nations under this clause of the Constitution. Piracy is an offense against all mankind and all nations. The pirate is *hostis humani generis*. A felony on the high seas is an offense of the same class. But a violation of a passport, or of the person of an ambassador, is an offense against the law of nations, because an offense against the relations between nations, by which their intercourse is governed. (*United States* vs. *Ortega*, 11 Wheat., 467; *United States* vs. *Smith*, 5 Wheat., 153; 2 Curtis Hist. Const., 330.)

The Government of the United States is charged with the relations of the Union with foreign powers, and with preserving their peace and good will with other nations.

The States are prohibited from all treaties, alliances, or confederations with foreign nations, and even from making agreements or compacts with them but with the consent of Congress. (C. U. S., art. 1, § 10.) On the other hand, the powers of war and peace, of treaties and international intercourse, are vested in the Federal Govern-

ment. The United States are charged with the common defense by the express power conferred and duty imposed on them "to protect each of them against invasion." (C. U. S., art. 4, § 4.) Preservation of the public peace is therefore a principal duty and power of the United States, and Congress is empowered to pass all laws necessary and proper to execute this power and duty.

It seems to be clear, that the Constitution vests in Congress power to define and punish, as offenses against the law of nations, everything which is done by a citizen of the United States hostile to the peaceful relations between them and foreign nations, or which is contrary to the integrity of the foreign country in its essential sovereignty, or which would disturb its peace and security. Such an act done directly by the Government of the United States would be a legitimate cause of complaint, and, unless redressed, of war. It is the duty of the Government to prevent any act of its citizens which would produce the same effect; and while the right of the foreign country to demand punishment may be of imperfect obligation, as it is termed, there can be no doubt it involves a duty on the part of the United States, which justifies the exercise of its power to define the act so done as an offense against the law of amity and good will between nations, in the sense of the Constitution.

This conclusion is sanctioned by the best authorities.

Vattel, in Book II, ch. 6, treats on this subject. He says:

> "Whoever offends the state, injures its rights, disturbs its tranquillity, or does it a prejudice in any manner whatsoever, declares himself its enemy, and

puts himself in a situation to be justly punished for it. Whoever uses a citizen ill, indirectly offends the state, which ought to protect this citizen, and his sovereign should revenge the injuries, punish the aggressor, and, if possible, oblige him to make entire satisfaction; since, otherwise, the citizens would not obtain the great end of the civil association, which is safety."

"On the other hand, the nation, or the sovereign, ought not to suffer the citizens to do an injury to the subjects of another state, much less to offend the state itself. And that not only because no sovereign ought to permit those who are under his command to violate the precepts of the law of nature, but, also, because nations ought mutually to respect each other, to abstain from all offense, from all injury, and, in a word, from everything that may be of prejudice to others. If a sovereign, who might keep his subjects within the rules of justice and peace, suffers them to injure a foreign nation, either in its body or its members, he does no less injury to that nation than if he injured them himself. In short, the safety of the state, and that of human society, requires this attention from every sovereign."

Again:

"As it is impossible for the best regulated state, or for the most vigilant and absolute sovereign, to mold, at his pleasure, all the actions of his subjects, and to confine them, on every occasion, to the most exact obedience, it would be unjust to impute to the nation, or to the sovereign, all the faults of the citizens. We ought not, then, to say, in general, that we have received an injury from a nation because we have received it from one of its members. The act of an individual is not necessarily and of consequence the act of the state, nor would it be just, in all cases, to

hold a state responsible for the act of each individual member of which it is composed. The responsibility of the state results from its neglect or inability to control the conduct of its subjects, or its neglect or inability to punish the offenses and crimes which they commit."

"But if a nation, or its ruler, approves and ratifies the act committed by a citizen, it makes that act its own; the offense must then be attributed to the nation as the true author of the injury, of which the citizen is, perhaps, only the instrument. So, also, the sovereign who refuses a reparation to be made of the damage done by his subject, or to punish the guilty, or, in short, to deliver him up, renders himself, in some measure, an accomplice in the injury, and becomes responsible for it. If a nation should refuse or fail to pass the laws necessary to restrain its citizens from aggressions upon other states, or upon their citizens, or if, such laws being enacted, the officers of the state neglect to enforce them, and such aggressions by individuals result therefrom, the state is unquestionably responsible for the injury."

Again, the same author says:

"From the principle just laid down it is easy to conclude that if one nation counterfeits the money of another, or if she allows and protects false coiners who presume to do it, she does that nation an injury. But, commonly, criminals of this class find no protection anywhere, all persons being equally interested in exterminating them." (Book II, ch. 10.)

Dr. Wharton, in accord with this last quotation from Vattel, supposes a forger of United States securities just across the boundary between them and Mexico, and holds Mexico clearly to be under duty to punish the offender, arising from its relations of amity to this country. (Wharton, Confl. of Laws, 1st ed., § 876.)

The same doctrine is sustained by Burlamaqui, cited and approved in 1 Phil. International Law, 230, 231, and the principle is held clear that when a nation, by sufferance or reception, by permission or asylum to the wrongdoer, aids, or abets, or connives at the wrong, or permits it, when it could have prevented it, it becomes by the law of nations responsible.

Mr. Phillimore (vol. 1, pp. 415, 416) cites the remarks of Lord Lyndhurst in the House of Lords in 1853, when he was speaking of the duty of the British Government as to the acts of British subjects and Austrian refugees hostile to the Austrian Government. He declared that such an act is an "offense against the law of nations. No writer on the law of nations states otherwise." He adds that such persons "are subject to be punished by the laws of this country." He declares that this arises from the fact that their conduct "tends to embroil the two countries together, to lead to remonstrance by the one with the other, and ultimately, it might be, to war."

Three cases in England of prosecutions upon this principle may be cited: A libel upon the Emperor of Russia (*R.* vs. *Pany*, 27 Howell, St. Trials, 627, before Lord Kenyon); a libel upon the Emperor Napoleon (*R.* vs. *Pettior*, 28 Howell, St. Trials, 530, before Lord Ellenborough), and *R.* vs. *Mort* (L. R., 7 Q. B. D., 224, before the court of appeals in 1881).

In all of these cases the power to punish was based, not on the municipal power, but on the power which results from the international relation of Great Britain to the crime, and to the offender against the foreign country.

In the case of *Holmes* vs. *Jennison* (14 Peters, 540), in

which was discussed the power of extradition, Chief-Justice Taney uses language which sustains all that has been previously said in this brief.

The dealing with foreign nations as to offenders against their laws is a matter for the Federal Government, because it relates to the law of nations.

Whether a criminal shall be surrendered to the foreign Government, or he shall be dealt with by this country, is an international question, upon which Federal power is unquestionable, if it be not exclusive. (See, also, 3 Story on Constn., § 1160.)

The court of appeals of New York, in an elaborate review of the extradition question, gives full authority for the enactment of such a law as this, and seems to place the question beyond all dispute. (*Curtis's Case*, 50 N. Y., 321 *et seq.*) Rawle, in his work on the Constitution, page 104, says:

> "The United States being alone responsible to foreign nations for all that affects their mutual intercourse and tends to promote the general relations of good order and just demeanor, it rests with them alone to declare what shall constitute such crimes and to prescribe suitable punishments."

Judge Story, with a little more emphasis, thus states it:

> "As the United States are responsible to foreign Governments for all violations of the law of nations, and as the welfare of the Union is essentially connected with the conduct of our citizens in regard to foreign nations, Congress ought to possess the power to define and punish all such offenses which may interrupt our intercourse and harmony with and our duties to them. (2 Story, Constitution, Cooley's edition, section 1165.)"

It is probable that it would be as offensive to a foreign power, for our people to debase their securities, or securities around which they had thrown the shield of protection, as it would to refuse to surrender a single fugitive. In fact, it can scarcely be doubted that the debasing their money would be more wounding to them, and a greater cause of war than harboring a fugitive from them.

In *The United States* v. *Bailey* (1 McLean C. C., 237), Judge McLean said:

> "We punish depredations committed by our own citizens on the persons or property of foreign people with whom we are at peace."

This act seeks to punish people here for counterfeiting the securities of foreign Governments; that is, debasing and destroying the value of their property. In other words, to punish people here for depredating upon the most valuable property of foreign nations or of people or corporations of foreign nations.

At the present term, this court (*The United States* v. *Rauscher, Ms.*), approved with great directness the opinion of Judge Taney in the Holmes-Jennison Case (*supra*), and in that ruling warrant is found for the exercise of this power by Congress. There is no stopping short of it.

Simplified then, it is all reducible to this one sentence: Foreign powers know of no nationality of any particular State of this Union; with such powers our only nationality is that of the United States. And is nationality or sovereignty more completely evinced or demonstrated in anything than in dealing with securities—money? It would seem not from the language of this court in the *Legal Tender Case* (110 U. S., 421).

It was upon this principle that Louis Kossuth and others were enjoined in the English courts, by the Emperor of Austria, from counterfeiting and tampering with Hungarian notes (securities), *The Emperor of Austria* v. *Day and Kossuth* (2 Giff., 628) affirmed on appeal as to the main point involved, leaving Kossuth to parade, as innocent amusement perhaps, the royal arms of Hungary, but not to deal with the notes (securities) of the Government in that way. (3 De G., F. & J., 217 *et seq.*)

There is no doubt, it is submitted, the Government here alleged to be offended could enjoin in the proper United States court parties from doing these acts. (*The Sapphire*, 11 Wall., 164; *O'Keefe's Case*, *ibid.*, 178.) But it would be a depressing spectacle to see her attempt to go into the courts of New York to do this. Why? Because as heretofore shown she knows not New York and has no dealings as a power with her. Then, if this civil redress is afforded by the nation, and not the State, why cannot the nation make the transaction an offense and punish it?

These acts lead to quarrels and to wars. But if New York fails to stop them, and the offended Government seeks redress by arms, it is then the war of the United States; that is all. Then why should not the United States take charge of it to prevent it, as in case of its being pushed to its last results, she has to bear the consequences.

The United States are by no means the first nation to pass such legislation as this.

Great Britain has done so. (See 2 Chitty's Statutes, p. 121. This statute was originally passed in 43 George III; see 1 Russell on Crime, p. 57.)

In the Criminal Code of the North German Confederacy,

which went into operation January 1, 1871, and which has since been adopted by the German Empire, there is an express provision for the punishment of counterfeiting of foreign coin or paper money, and this provision, it seems, was taken from the Prussian laws before existing.

Section 133 of the Criminal Code of France provides as follows:

> "Every person who has counterfeited or altered foreign moneys in France, or assisted in issuing, exposing, or introducing foreign moneys in France so counterfeited or altered, shall be punished by hard labor, &c."

And it has been held in numerous decisions of the highest court of France that this section applies to all kinds of foreign moneys, whether specie or notes. The section just quoted has been in force in France since 1810, having been section 134 of the code which took effect that year.

Sections 320 and 330 of the Penal Code of Italy provide for the punishment of counterfeiters of foreign coin or of—

> "The obligation or evidence of public debt equivalent to money issued under any denomination by a foreign Government."

In Chili there is in the code a distinct penalty against any one who shall counterfeit obligations to bearer of the public debt of any foreign country, interest coupons belonging to such obligation, or bank notes payable to bearer, the issue of which has been sustained by a law of that foreign country. (Article 173 of the Penal Code of Chili.)

In the Criminal Code of Costa Rica, article 436, there

is a similar provision, and there are also similar provisions in the laws of other South American states.

As further showing what is the law of nations on this subject read from the work of Mr. David Dudley Field, entitled "Outlines of an International Code," in which it is declared that every person commits a public offense who—

> Within the jurisdiction of a nation a party to the code, with intent to defraud, forges, counterfeits or falsely alters, the great seal or principal seal of any nation or state whatever, or the seal of any court or tribunal, or public officer authorized or created by the law of any nation, or who falsely makes, forges, or counterfeits any impression purporting to be the impression of any such seal; or,
>
> Any certificate or other public security issued, or purporting to have been issued, under the authority of any nation whatever, by virtue of any law thereof by which certificate or other public security the payment of any money or delivery of any property, absolutely or upon any contingency, is promised, or the receipt of any money or property acknowledged; or,
>
> Any gold or silver coin issued by the Government of any nation whatever, to subserve the purposes of money, with intent to sell, utter, use, or circulate the same as genuine within any nation whatever, or to injure or defraud any nation whatever, or the members thereof.

Then follow other provisions of the same general character. (See Second Edition, 1876, p. 626.)

It is perfectly clear, then, that this act, in so far as it punishes for counterfeiting foreign securities, is sustained by precedents in Governments generally, and upon a fair

interpretation of the powers conferred upon Congress by our Constitution, touching the rights and duties of the General Government internationally. To what Government should it be confided but to that which holds the powers of peace and war, of international intercourse, and the express power "to define and punish offenses against the law of nations."

But refuge is sought by the defendant, under the language used in the indictment, showing these securities, &c., were the property of certain banks and corporations in the foreign Government, and not the property of the foreign Government itself. This, however, is more a quarrel about the difference between the title of the act and the language in the body of the act itself. Some of the States make provisions in their constitutions covering a difficulty of this sort, but the Constitution of the United States does not. While the title of the act may be not sufficiently broad, yet the language in the act leaves nothing uncertain in this respect. It protects these securities of *corporations* existing under the laws of foreign Governments—*securities authorized* by the laws of foreign Governments, and all that. Ample protection throughout the act is given to these *securities*, by whatever name, of *banks*, *corporations*, *&c.*, of foreign Governments. But it is technically asserted that while possibly Congress might punish the counterfeiting securities of a foreign Government, it cannot punish counterfeiting securities of banks, &c., existing under those Governments. Why not?

Running through all the authorities, we find it is not only the rights of foreign nations or Governments, but it is the rights of people living under those Governments as

well. Here banks and corporations issue under the authority of a foreign Government—banks and corporations organized under the laws of that Government—their notes, and they are counterfeited and uttered here to the injury and detriment of those banks and corporations. It is needless to call the court's attention to the fact of how these corporations are regarded, in their business rights, as citizens, by the laws of this and all other countries. And to the protection of these rights of their people, their citizens, as well as to their own as nations, is every nation committed. It is these very offenses against rights of citizens, corporations, or what not, that bring Governments into collision and war, and they are included in that protection given to people of other or foreign nations spoken of by Vattel, Story, Rawle, Taney, and McLean quoted above.

A foreign power sends here for a fugitive who has murdered a single citizen on her territory—that is, he has violated a law of that country in taking human life, and we surrender him to be punished there. Here, upon depredation on the securities of a bank or corporation in legal existence in a foreign country, and we provide to punish him here when he commits what would be a crime under the law of that foreign country if done within its jurisdiction. The distinction as to the power in the two instances is invisible.

We have an entire chapter of the Revised Statutes (ch. 67), containing some dozen sections embracing the *neutrality* laws passed by Congress, and from time to time there have been decided in this court some two dozen or more cases, involving rights, duties, and liabilities under

those laws. Neutrality is not to be found in the Constitution, nor any word possibly approximating it in meaning, and no more power is conferred in words by the Constitution to pass such laws than there is to enact such a law as is presented in this case. How, then, does Congress get this authority? We must step back a little before the birth of our Constitution to get at this. It is the duty of a neutral not to aid one of the belligerents—to do so would be a just cause of war. In fulfilling this duty the nation itself not only refrains from hostile acts, but by neutrality laws punishes its own citizens for giving such aid. (Vattel, sup., ch. 7, p. 332 *et seq.*) So that when the United States were born as a nation, with their rights, duties, and obligations towards the family of nations, they took upon themselves this one duty or obligation as prescribed by the law of nations. (2 Story, sup., § 1570.) Why may not New York and any other State pass these neutrality laws as to persons within their jurisdiction? Because this refers to the status—the intercourse, the relation of nations among which the States as States are not known. And so does the matters denounced by this statute. Other analogies might be adduced, but it is not deemed necessary.

This much is responsive to all the questions certified except the ninth, tenth, and eleventh.

Earnest if not violent objections are urged against the statute that it does not denounce the offenses specified as being offenses against the laws of nations. That is to say, the artist, after painting what he desired to represent a dog, not being sure it did, wrote under it "*This is a dog.*"

But this very question was settled adversely to this

view long since in *Smith* v. *United States*, 5 Wheat., *sup.* There is no doubt the offenses here named are as well understood internationally, so to speak, as murder or larceny is understood in any of our States. The acts are described and punishment affixed, and it has been seen these acts come within the obligations of nations with each other; and that is enough, and the indictment follows closely the statute. (See Thatcher's Practice, p. 616 *et seq.*, where the various cases in this court and in different circuits are collected. *Ex parte Yarborough*, 110 U. S., 651.)

Whatever may be lacking in this brief, and doubtless there is much, will be more than supplied on all the points by a reading of the opinion of the court in *United States* v. *White et al.*, 27 Fed. Rep., 200 *et seq.*

Wherefore, it is most respectfully submitted, that the court below should be answered under the questions from one to eight inclusive, that the act of May 16, 1884, is constitutional—and in response to the ninth and tenth the act sufficiently names or defines the offenses, and to the eleventh the indictment is sufficient in law.

A. H. GARLAND,
Attorney-General.

120-479

Supreme Court of the United States.

THE UNITED STATES,

Plaintiff,

against

RAMON ARJONA,

Defendant.

BRIEF FOR DEFENDANT

On a Certificate of Division in Opinion between the Judges of the Circuit Court of the United States for the Southern District of New York.

GEORGE W. WINGATE,
AUGUSTUS A. LEVEY,
Of Counsel.

WINGATE & CULLEN,
Attorneys for Defendant,
No. 20 Nassau Street,
New York.

Supreme Court of the United States.

THE UNITED STATES,
Plaintiff,

vs.

RAMON ARJONA,
Defendant.

Brief for Defendant

on a certificate of division in opinion between the Judges of the Circuit Court of the United States for the Southern District of New York.

Facts.

On April 11, 1886, the defendant, Ramon Arjona, a citizen of the United States of Colombia, then residing in the City of New York, was indicted by the Grand Jury of the United States, in the Circuit Court, for the Southern District of New York, in the Second Circuit.

Record, fols. 1 to 7.

The defendant was indicted under §§ 3 and 6 of the Act of May 16, 1884, entitled "An act to prevent and punish the counterfeiting within the United States of notes, bonds, or other securities *of foreign governments.*"

Vol. 23, Stat. at Large, ch. 52, p. 22, §§ 3 and 6.

Record, fol. 7.

This act prescribes and punishes the following as offenses:

§ 1. The forging or counterfeiting within the United States of any bonds or security *of any foreign government.*

§ 2. The passing of such forged bond or security.

§ 3. The false making, forging, or counterfeiting within the United States, with intent to defraud, or knowingly assisting therein, of any bank note or bill *issued by a bank or other corporation of any foreign country* and intended by the law or *usage* of any such foreign country to circulate as money, such bank or corporation being authorized by the laws of such country.

§ 4. The uttering or passing of any such counterfeited bills.

§ 5. The having the same in possession with intent that they shall be passed.

§ 6. Having within the United States any plate, or part thereof from which has been or may be printed any counterfeit note, bond or other security *of any foreign government, bank or corporation*, except by lawful authority, or using or permitting the same to be used in counterfeiting such foreign obligations, or engraving or causing to be engraved any plate in the likeness or similitude of any plate designed for the printing of the genuine issues *of any foreign government, bank or corporation*, or making or causing to be made any engraving or print in the likeness of any genuine note, bond or other security, or any part thereof, *of any foreign government, bank or corporation*, or bringing any such plate or engraving into the United States.

The first count of the indictment charges the defendant with having "in his control and custody a certain metallic "plate from which there might then and there be printed "in part a counterfeit note in the likeness and similitude "in part of the notes theretofore issued by *a foreign bank*,

" *which said bank was then and there a bank authorized* " *by the laws of a foreign State, to wit, the State of* " *Bolivar*, said State being then and there one of the " States of the United States of Colombia."

Record, fol. 2.

The second count charges the defendant with causing " to be engraved, a plate, in the likeness and similitude " of a plate designed for the printing of the genuine issues " of the obligations *of a foreign bank.*"

Record, fols. 3 and 4.

The third count charges the defendant with procuring " to be falsely made, a certain note, in the similitude and " resemblance of the notes theretofore issued by *a bank of* " *a foreign country*, to wit, *the bank* known as El Banco " del Estado de Bolivar, the same being then and there *a* " *bank authorized by the laws of one of the States of the* " *United States of Colombia, that is to say, the State of* " *Bolivar*, and the notes issued by the said bank being " then and *by the usage of the said State of Bolivar* in- " tended to circulate as money."

Record, p. 1, fols. 5, 6.

Under this arrest, and under a bench warrant issued upon this indictment, defendant has been in close confinement in Ludlow Street Jail in New York City, since April 11, 1886, and is now confined there. On May 12, 1886, the defendant's counsel filed a demurrer to the indictment in open court as insufficient in law, and the United States attorney joined issue.

On June 9, 1886, the demurrer was submitted on both sides upon briefs.

On September 28, 1886, the Judges of the Second Circuit filed their certificate of division, and certified the same to this Court for final decision.

Record, p. 2, fol. 8.

By this certificate of division, the following are briefly the questions which are now presented to this Court:

1. Whether the third and sixth sections of the Act of Congress of May 16, 1884 (as above mentioned) are constitutional as within the legislative powers of Congress.

Certificate of Division, Sub-divisions First and Second, Record, page 3, fols. 10, 11.

2. Whether the counterfeiting within the United States of the notes of a foreign bank or corporation can be constitutionally made by Congress an offense against the laws of nations, *unless it appear that such notes are the notes or money of issue of a foreign government.*

Certificate of Division, Sub-divisions Third and Fourth, Record, page 3, fol. 12.

3. Whether the law of nations, as referred to in the United States Constitution, includes or can be by Congress made to include such offenses as are described in this indictment, *i. e.*, having in possession or causing to be made, plates or printing in the likeness of the issues of a foreign private banking corporation, *where it does not appear that the money is the currency of a government.*

Certificate of Division, Sub-divisions Fifth and Sixth, Record, page 3, fol. 13.

4. Whether there is any authority to be found in the United States Constitution for the legislation comprised within the third and sixth sections of the Act of May 16, 1884.

Certificate of Division, Record, page 4, fol 14.

5. Whether, if Congress could lawfully make the acts described in this indictment offenses against the law of nations, it is not limited by the Constitution *to first by apt terms in the statute itself to "define" them as such offenses.*

Certificate of Division, Record, page 4, fols. 15, 16.

6. Whether the indictment is sufficient in law.

Ibid.

POINTS.

First—The act under which the indictment was found is unconstitutional unless Congress is clearly vested by the Constitution with the power to punish the counterfeiting within the United States of the notes of a foreign bank.

"The Government of the United States is a government of delegated powers. These are limited in number. Within the scope of these powers as enumerated and defined within the Constitution it is supreme, *but beyond them it has no existence.* It was erected for special purposes and endowed with all the powers necessary for its own preservation, and the accomplishment of the ends its people had in view. It can neither grant nor secure to its citizens any right or privilege not expressly or by implication placed under its jurisdiction."

United States *vs.* Cruikshank, 92 U. S., 542, 548.

"Every valid act of Congress must find in the Constitution some warrant for its passage."

United States *vs.* Harris, 106 U. S., 629.
Martin *vs.* Hunter's Lessee, 1 Wheat, 304.
McCulloch *vs.* Maryland, 4 *Id.*, 316.
Gibbons *vs.* Ogden, 9 *Id.*, 1.
United States *vs.* Reese, 92 U. S., 214, 221.

Second—The only provisions of the Constitution under which Congress is claimed to be vested with the power to enact the law in question, are the following provisions of Article I. thereof:

SEC. 8. The Congress shall have power * * * *

"6. To provide for the punishment of counterfeiting *the securities and current coin of the United States.*"

* * * * * *

"9. * * * * to define and punish piracies and felonies committed on the high seas, *and offenses against the laws of nations.*"

Third—The first provision is so clearly not applicable to the offenses covered by the indictment, that no argument is needed to demonstrate it.

The decisions under it may, however, be referred to as showing the strictness with which Congress is held to the exact powers defined in the Constitution.

In Fox *vs.* State of Ohio, 5 How. (U. S.), 411, 432,

it was contended that Congress had, under the Constitution, exclusive power to punish counterfeiting the coin of the United States, and therefore a conviction under a State law for passing a counterfeit dollar was without jurisdiction.

The Court said: "We think it is manifest that the language of the Constitution, by its proper signification, *is limited to the fact or to the faculty in Congress of coining* and stamping the standard of value *upon what the government creates or shall adopt*, and of punishing the offense of producing a false representation of what may have been so created or adopted.

The coining of a false representation of the true coin "is an offense *directly against the government*, by which individuals may be affected; the other *is a private wrong* by which the government may be remotely, if it will in any degree be reached."

It was therefore *held* that the power to punish the offense was in the State, some doubts being even expressed as to the power of Congress to punish the mere *passing* of counterfeit money.

In U. S. *vs.* Marigold, 9 How. (U. S.), 560, the Court held it "to be a sound maxim that no powers should be conceded to the Federal Government which cannot be regularly and legitimately found in the charter of its creation," yet held that the obligation to coin money carried with it the obligation to protect that coinage, and therefore Congress was authorized to prohibit the importation or uttering of *such counterfeit coin as was current within the United States.*

Fourth—It is admitted, for the sake of the argument, that the law of nations is sufficiently broad to authorize Congress to include within the obligations which this nation owes to others, the prevention of the counterfeiting of the *obligations issued by a nation as such*, and that the act in question is constitutional as far as it covers such obligations.

This was the only ground upon which the passage of the act was urged.

See Brief of Charles C. Beaman, used before the Committee of House of Rep.

It was also the object stated in the title of the act itself.

It is as *to this point* only that the act has been upheld.

U. S. *vs.* White, 27 Fed. Rep., 200, 202.

Fifth—The counterfeiting within the United States of a note *of a foreign corporation* cannot be constitutionally made by Congress an offense against the law of nations.

(*A.*) The discretion given to Congress to define and punish offenses against the law of nations is limited to those offenses *which are legitimately included within that law.*

Kent on International Law (Dr. Abdy's notes), London, 1886, page 445.

If Congress could, under the pretense of passing laws in support of the law of nations, enact statutes making those things offenses which have never been regarded by any recognized authority as coming within the obligations of that law, the carefully limited powers conferred by the Constitution upon it would be lost in the illimitable extent of legislative discretion which would thus be opened.

The same principle applies to the clause in the Constitution in regard to the "*law of nations*" as has been held in regard to the *police power* of the States, a power equally

ill-defined in terms and yet one which courts have invariably restricted within a narrowly-limited sphere, viz.:

"The police power is not without limitations, and in its exercise the Legislature must respect the great fundamental rights guaranteed by the Constitution. If this were otherwise the power of the Legislature would be practically without limitation. In the assumed exercise of the policy power in the interest of the health, the welfare or the safety of the public, every right of the citizen might be invaded and every constitutional barrier swept away.

"Generally, it is for the Legislature to determine what laws and regulations are needed to protect the public health and secure the public comfort and safety, and while its measures are calculated, intended, convenient and appropriate to accomplish these ends, the exercise of its discretion is not subject to review by the courts. *But they must have some relation to these ends.*

Under the mere guise of police regulations, personal rights and private property cannot be arbitrarily invaded, *and the determination of the Legislature is not final or conclusive.* If it passes an act ostensibly for the public health and thereby destroys or takes away the property of a citizen or interferes with his personal liberty, *then it is for the courts to scrutinize the act and see whether it relates to and is convenient and appropriate to promote the public health. It matters not that the Legislature may, in the title to the act or in its body, declare that it is for the improvement of the public health. Such a declaration does not conclude the courts, and they must yet determine the fact declared and enforce the supreme law.*"

Matter of Jacobs, 98 N. Y., 98.
Matter of Ryers, 72 N. Y., 98.
Matter of Cheesebrough, 78 N. Y., 232.
Lake View *vs.* Rose Hill, 70 Ill., 191.

This principle has been recognized by the Courts of the United States, and even in regard to the powers of Congress under this particular section of the Constitution.

Thus, in

United States *vs.* Palmer, 3 Wheaton, 642,

Judge Johnson decided that—

"Congress cannot make that piracy which is not piracy by the law of nations, in order to give jurisdiction to its own courts over such offenses."

Almost the same words are used by Chancellor Kent.

1 Kent Com., p. 203; Marg., p. 195.

In U. S. *vs.* Pirates, 5 Wheaton, 184, 195, it was held that Congress could not define "murder" as being piracy. If they did, "*what offense might not be brought within their power by the same device.*"

(*B.*) It is clear that there is no distinction between

(1) forging or counterfeiting the note or obligation of "a foreign bank or corporation," or

(2) forging a similar obligation of a private banker, or

(3) forging the obligation of an individual.

Neither is there any reason why the forging or counterfeiting of the obligation of *a foreign corporation* is any more a violation of the law of nations than the forging the check of *a foreign citizen.*

Nor is there anything peculiar in the crime of *forgery* which brings it any more within the law of nations than is the case with *any other offense* against property, persons or society.

It therefore follows, that if Congress has power to "define and punish" the counterfeiting or having a plate of the obligation of a foreign corporation as an offense against "the law of nations," it has a similar power not only in regard to forgery of all descriptions, but with libel, slander, or even petty larceny, as they are all crimes by which a foreigner is injured in his property or feelings.

Sixth—The obligations of the law of nations do not include the offenses charged in this indictment.

(*A.*) The offenses are the counterfeiting *of a private obligation of a private institution, i. e.*, of a bank not proved nor alleged to be in any sense a governmental institution nor in any way connected with a Government except to have been authorized by it.

It cannot be contended that this is a crime against a nation, for the nation *quâ* nation is in no sense injured.

The forgery or counterfeiting of the "coins or notes of a foreign government" is a crime against it in its sovereign capacity, but there is no such element of sovereignty injured or outraged in the forging or counterfeiting of the obligation of one of its citizens.

The Attorney for the United States claimed in his brief at the Circuit Court, that the notes in question must be considered as "money," and, therefore, as within the law of nations.

But this is contrary to the decisions of this Court.

The definition of money or bills of credit as used in the Federal Constitution, means a paper *issued by the sovereign power containing a pledge of its faith* and designed to circulate as money.

Briscoe *vs.* Bank of Kentucky, 11 Peters, 257.
Craig *vs.* Missouri, 4 Pet., 410.

Moreover, there is no allegation in the indictment in this case that the money charged to have been counterfeited *was the money of a foreign country or government*, but only that it was "by the *usage* of the State of Bolivar intended to circulate as money."

Record, page 2, fol. 6.

For all that appears, this "*usage*" may have constituted all the legality attached to the issuance of this paper.

It does not appear that there was even a connection between the State of Bolivar (one of the federal members of the United States of Colombia) and the bank whose notes are herein alleged to have been counterfeited, such as that which exists between the English Government and the Bank of England, or as formerly existed between the United States Government and the Bank of the United States.

But would the counterfeiting even of a Bank of England note be an offense against the law of nations, or could Congress constitutionally make it so?

Could the United States insist that if a foreign nation did not treat the counterfeiters of our national bank notes as *Hostes humani generis* that it would be a *casus belli?* But even these analogies are defective; the present case is more as if an attempt had been by the Goverment of the United States during the existence of our State bank currency, to punish the counterfeiting of such notes as an offense against the law of nations.

A political division of a country like a federal State or a county cannot have as to a foreign government any element of sovereignty to be thus infringed. *Still less can such be the case with respect to a private corporation created by such a political division.*

This is true even where the State has a pecuniary interest in the corporation; in such an event the corporation does not draw to itself the sovereignty of the State, but on the contrary. * * As was held by this Court in

Bank of the United States *vs.* Planters' Bank, 9 Wheat, 904.

"When a government becomes a partner in a trading "company it divests itself, so far as concerns the transac- "tions of that company, of its sovereign character, and "takes that of a private citizen. Instead of communi- "cating to the company its privileges and its prerogatives, "it *descends* to a level with those with whom it associates "itself, and takes the character which belongs to its asso-

"ciates and to the business which is to be transacted. "Thus, many states of the Union who have an interest in "banks, are not sueable even in their own courts, yet they "never exempt the corporation from being sued. A "State by giving a bank the capacity to sue and be sued, "voluntarily strips itself of its sovereign character, so far "as respects the transactions of the bank, and waives all "the privileges of that character. As a member of a cor- "poration, a government never exercises its sovereignty. "The Government, becoming a corporator, lays down its "sovereignty, so far as respects the transactions of the cor- "poration, and exercises no power or privilege which is not "derived from the charter. The State does not, by be- "coming a corporator, identify itself with the corporation."

If bank bills of a foreign corporation are within the law of nations, so that it is an offense against it to reproduce them, why is not the reproduction of a foreign book, engraving, or "the counterfeiting of an old master," also an offense?

English citizens have publicly raised funds for the aid of revolutions in South America, Italy, Greece, and even for the South in our "late unpleasantness," and have purchased and sent them arms, without being considered to have violated the law of nations.

The United States permitted at one time the carrying on of *two* Fenian governments at the same time, in Union Square, in New York City.

It has also permitted, without other than moral opposition, the public raising of funds for dynamite to be used against English officials.

None of these were considered offenses against the law of nations.

(*B.*) The "law of nations" referred to in the Constitution is confined to those acts committed by one nation, or its citizens, by which the rights of another nation are injured.

In other words, such as amount to a *casus belli*.

This is expressly recognized by Judge Brewer in U. S. *vs.* White, *supra*.

Thus, in Madison's article in the *Federalist*, on this section of the Constitution, he speaks of it as necessary, as the articles of confederacy "leave it in the power of any indiscreet member *to embroil the confederacy with foreign nations.*"—*The Federalist*, No. 42.

In Kent's International Law, edited by Abdy, London, 1886, p. 424, offenses against the law of nations are defined to be "a breach of public faith." It is stated that "no nation can violate public law without being subjected to the penal consequences of reproach and disgrace and without incurring the hazard of punishment to be inflicted in solemn war by the injured party. The offenses are defined to be, violations of safe conduct, infringements of the rights of embassadors, and piracy."

It will be observed in this connection that as in the Constitution offenses against the law of nations are grouped with piracy and felonies on the high seas, under the maxim, *noscitur a sociis*, they are all offenses similar in limit and degree, *ejusdem generis*, it is also clear that the framers of the Constitution had in mind the definition above given as to what constituted offenses against the law of nations.

"The direct relations subsisting *between sovereign states* themselves, as in the modern world, have exclusively received the denomination of law of nations."

Wheaton's International Law, p. 14; citing Heffter & Dorsit, *des Gens*.

"As it is impossible for the best regulated state, or for the most vigilant and absolute sovereign to mold, at his pleasure, all the actions of his subjects, and to confine them on every occasion to the most exact obedience, it would be very unjust to impute to the nation, or to the sovereign,

all the faults of the citizens. We ought not then to say in general, that we have received an injury from a nation because we have received it from one of its members."

Vattel *Droit, des Gens*, liv. 2, ch. 6. §§ 71, 72.

Though the slave trade has been declared to be piracy by the laws of all civilized states, yet no one state is allowed, in the absence of special compact, to capture slaves belonging to any of its neighbors. *They are not offenders against international law but against the law of their own country.* (See opinion of Marshall, *Ch. J.*, in The Antelope, 10 Wheat, 66, Madrago *vs* Willis, 3 B. and Ald., 353, Le Louis, 2 Dodson's R., 210). But with piracy *jure gentium*, the case is very different.

That is an offense justiciable by any state whose officers can capture the offenders, the reason being that it is a crime by international law, and not merely by the law of each separate state. *To be accurate with regard to international law, we must assert that the law enforced is a law common to all nations*, and is not merely the law of the nation which seizes the ship.

Lawrence Essays on Mod. Int. Laws, 25.

In United States *vs.* Smith,

5 Wheaton, 160, 161,

the United States Supreme Court said, "What the law of nations upon a subject is, may be ascertained by consulting the works of jurists writing professedly on public laws, or by the general usage and practice of nations or by judicial decisions recognizing and enforcing that law."

An exhaustive examination of these authorities fails to find any recognition for any such obligation in the law of nations as the offenses charged in this indictment.

It is true that the definitions and the limitations of international law furnished by the text writers are strik-

ingly inconsistent, and it is with much justice that a celebrated modern author has said:

"Unhappily the words Law of Nations and International Law are mere conventional terms, which do not bear any strict interpretation. It is only in a vague, general sense that Law can be used in this connection, because there is no enacting authority behind that system of rules and opinions, which passes under this name and which could alone give it the character of Law, and hence it is that the definitions given of their service by writers on International Law are singularly variable and ambiguous."

M. Emile de Laveleye, cited in John Stuart Mill on Representative Government.

Although for this reason it is difficult to find any two authors who give an identical definition, yet the weight of authority is overwhelming, that the rights confessed and the duties imposed by the Law of nations, *are those which affect the relations of governments to one another quà sovereignties.* This may be, with respect to their nationalty as such (an infraction of which is invasion), or it may be as to some one or more of the objective representations of that sovereignty, as *e. g.*, the national flag (a violation of which may be piracy); or as to their national coinage (of which counterfeiting is a violation); or as to their ambassador (an outrage on whom is considered tantamount to an invasion *in petto*).

No authority can be found in whom there is the slightest warrant for the position that one nation owes another any redress, *under the law of nations*, for a tortious act committed by an individual citizen (acting in no official capacity, and neither with nor by an official sanction), upon an individual citizen of another State.

The definitions above stated are much too numerous to cite at length. The following, however, are those given by the more distinguished authorities:

"The law of nations is the science of the law subsisting *between nations and States*, and of the obligations that flow from it."

Vattel, Le Droit, etc., prelim., § 3.

And Vattel, in enumerating the offenses against the law of nations, says: "To counterfeit money is an offense against the state, because the coinage of money is a prerogative of the state, *and the public credit being surety for the money* the sovereign alone has the right to order it to be coined."

As some citations have been made by the Government from Vattel on the subject of counterfeiting, *it must be remembered that counterfeiting was considered as an offense against the State by these early writers, because, at that time, all issues of money had a governmental origin, and paper money, having no legal tender character, and which circulated purely on the credit of the individual or institution which emitted it, was entirely unknown.*

Chancellor Kent defines International Law as "That collection of rules customary, conventional and judicial which *independent states* appeal to for the purpose of determining *their rights*, prescribing *their duties* and regulating *their intercourse* in peace and war, imposed by opinion and based upon the consent of nations."

Professor Woolsey denies the rights and obligations of international law as arising from its jural foundations, thus:

1. The obligation lying on the state to protect the individuals who compose it, not only from domestic but also from *foreign aggression.* This obligation emanates immediately from the prime function and end of a state, and is limited by the rightfulness of the subject's conduct in his intercourse with the stranger.

2. Those qualities or rights which are involved *in the existence of the state.* These may be called rights of sovereignty, independence and equality. The exercise of these rights and the right of self-governing may together be embraced under the head of rights of self-preservation.

3. The rights *which the State has* in common with individuals or with artificial persons, as the right of property, that of contract and that of reputation.

4. The right which arises when the free exercise of the state's powers above mentioned is impeded, and that is the right of redress, near to which lie the questionable rights of punishment and of conquest.

Woolsey Introduction to International Law, 31.

The definitions of the following writers, though differing materially in the language employed, all unite in the one respect we have above described. They one and all concur in limiting the function of international law to a violation of some principle of sovereignty.

Pinheiro Ferreira Cours, t. II., pte. 1, § 2, Art. 1, § 1.
Felix, Tit. prelim., ch. 1, § 1.
Ortolan, Regles, t. 1, p. 54.
Halleck, ch. 2, § 1.
Heffter, § 1.
Hautefeuille Des Droits, t. 1, p. 3.
Martens, precis., § 2.
Wolff, Jus. Gent., proleg., § 2.
Manning, pp. 2, 3.
Polson, sec. 1, § 1.
Klüber Droit.
Canchy, Int., § 1.
Phillimore, Com., vol. 1, § 9.
Rigueline, lib. 1, tit. 1, sec. 1, ch. 1.
Grotius, Le Droit, proleg, § 1.
Wildman, vol 1, p. 1.
Fiore, Nouv. Droit Int. 55.
Savigny, Systeme, liv. 1, ch. 2, § 6.

The language of those writers, whose works consist of proposed international codes for the better definition of the law of nations, is to the same effect. None of them have thought for a moment of introducing into codifications of rights and remedies between nations infractions of purely individual rights.

The first proposed code was that of the celebrated Jeremy Bentham; he defines the objects of an inter-

national code for the protection of the law of nations, thus:

1. General utility, in so far as it consists in doing no injury *to other nations*, saving the regard which is proper to its own well being.

2. General utility, in so far as it consists in doing the greatest possible good *to other nations*, saving the regard which is proper to its own well being.

3. General utility, in so far as it consists in not receiving any injury *from other nations*, saving the regard due to the well being of these same nations.

4. General utility, in so far as it consists in such state receiving the greatest possible benefit *from all other nations*, saving the regard due to the well being of these nations.

Cited in Wheaton's Law of Nations, 331.

Bluntschli proposes the following as acts in violation of the law of nations, none of which include such an offense as that under consideration:

a. Piracy.

b. Pillage of foreigners and the refusal to offer them redress.

c. To interdict to ships resorting to waters in its vicinity traffic with other neighboring waters.

d. To assert an exclusive dominion over a sea.

e. The rupture of a general equilibrium by a state aspiring to universal dominion.

f. Infractions of the rights of embassadors, etc.

g. The invasion of foreign territory without a declaration of war.

h. Oppression of independent nationalities and peoples.

i. The introduction of slavery.

k. Religious persecution.

Bluntchli, *Le droit International Codifie*, translated by Lardy, 251.

The proposed International Code of David Dudley Field (though in it the reprocal obligation of nations are generally considered by commentators to have been stretched to their utmost tension) *does not include the counterfeiting of private securities as a public offense.*

In this work the crime of counterfeiting is limited,

1st. To public securities issued under the authority of a nation.

2d. To gold or silver coin issued by the government of a nation.

Field International Code, 2d ed., 1876, p. 626.

NOTE—All the extradition treaties limit the crime of counterfeiting money *to that issued by the state*, either coin or paper.

See a very complete abstract of them in *Calvo Droit International Theorique et Pratique, t.* 2, *l.* xv., § 1, *Juridiction d'un etat sur les crimes et sur les delits.*

Also Kirchner's L'Extradition.

The attempt has been made by some writers to found the obligations of International Law upon "Natural Ethics" or upon what has been called the obligations of "Natural Religion" and in some way to base the law of nations upon morality, but the great weight of opinion is clearly hostile to such an attempt.

"The law of nations is not to be confounded with the Divine Law nor is it identical with the Natural Law."

On the rights and duties of nations in Time of Peace, Sir Travers Twiss, 141.

The law of nations does not command or prohibit things because they are intrinsically good or intrinsically bad, for such things belong properly to natural law, and in this sense therefore the law of nations is not comprehended in natural law."

Fr. Suares de Leg. Ac. Deo., Leogislat., L. 2, C. 7, S. 1, cited in Ward's Enquiry, etc., 1, 17.

It is for this reason that violations of foreign copyrights, patents, etc., are not violations of law in the absence of express statutes prohibiting them.

But it is said in Mr. Beaman's "Memorandum" and is repeated in the decision of Judge Brewer in U. S. *vs.* White *supra*, that war might grow out of "the counterfeiting in the United States of the coins or notes of a friendly nation," and that to prevent war from arising was one of the objects of the clause of the Constitution we are considering. It is sufficient to say in reply to this that the notes alleged to have been counterfeited in the case at bar were not those of *a nation.*

But if they were there is no authority for considering such an offense, if it had been committed, a *casus belli.*

It is undoubtedly true that war might be declared for such a cause *by* a nation considering itself aggrieved.

But so it might for newspaper attacks upon the nation, or upon the person or character of its sovereign, or through a desire for plunder. In fact, statistics show that a large majority of the wars of the last century were unprovoked.

But neither would make the cause from which such a war arose a *casus belli*, as defined by the law of nations, which includes only wars arising from a justifiable cause.

In other words, because every violation of the law of nations is a *casus belli* it by no means follows that every *casus belli* is necessarily a violation of the law of nations.

Justifiable causes of war are divided into three classes:

1st. To secure what belongs or is due to us.

2d. To provide for our future safety by obtaining reparation for injuries done to us.

3d. To protect ourselves from a threatened injury by

invasion in order to deprive our enemy of the means of inflicting the injury.

Hallock, Laws of War, 313.
Paley Moral and Pol. Philos., b 6, ch. 12.
Vattel Droit des Gens, lib. 3, ch. 3, § 25.
Grotius de Jur. Bel. act Pac., lib. 2, cap. 1, § 1.
Phillimore on Int. Law, vol. 3, § 49.
Garden de Diplomatie, liv. 6, § 5.
Bello Derecho International, pt. 2, cap. 1, § 3.
De Felice Droit de la Nat., etc., tome 2, lec. 21.
Real Science du Gouvernment, tome 5, ch. 2, sec. 2, § 6.

Some of the above writers say that "injuries done to a citizen of the State is an injury to the whole State, and this gives a right to make war upon any one from whose unlawful conduct they have suffered injuries which the aggressor refuses to repair," but it is evident that this, if true, is so only in an extremely limited sense, for it is certainly not every injury to a foreign citizen that would afford a justifiable *casus belli*. No one can suppose that any act of libel or slander, petty larceny, burglary or rape, would do this (and this was the view taken by Napoleon Bonaparte in the celebrated case of the libels of Pelletier, though these were entirely unredressed). The language was directed to *personal trespasses*, as an invasion, riot, etc., or some wrong committed in the territory of the complaining nation, not to an act done by a citizen or denizen in his own or a foreign country by which the property of the citizen of another State might be injured. It is evident that the general language to which text-book writers on the law of nations are notoriously addicted, requires for practical inquiries to be very carefully restricted when regarded with relation to this subject to be justified by the law of nations.

In the message of President Cleveland in regard to the massacre of the Chinese in Wyoming, he specifically asserted that even although the acts were committed not in a

State but in a Territory, yet they were not such acts as came within the law of nations, and the Government owed no obligation to China to make reparation therefor. Yet such acts were the unlawful plundering and killing of Chinese citizens in a Territory of the United States.

It is submitted that no adjudicated case can be found which holds that the law of nations includes any such offense as is covered by the present indictment.

If it be regarded upon the ground of international comity it will be remembered that the courts of both England and the United States have declared that no obligation of comity would induce them to recognize a right (other than that depending on *status e. g.* marriage) depending purely on the municipal law of a foreign government.

In the case of Jeffreys *vs.* Boosey, 4 Ho. Lords, 815, it was decided by the House of Lords that the Court of Chancery would not recognize the copyright of a foreign country so far as restraining its infringement in England.

So as to a patent in the case of Caldwell *vs.* Van Olissingen (9 Hare, 415); so as to the revenue in the case of Holman *vs.* Johnson, 1 Cowp., 341–3, where Lord Mansfield said "No country will take cognizance of the revenue laws of another."

In Sharp *vs* Taylor, 2 Phil., 801, 816, Lord Cottenham recognized the principle that an English court of equity would not interfere to prevent smuggling.

See, also, Pellcat *vs.* Angell, 2 Cr. Mee & Rose, 311, and cases cited.

These decisions are followed in all the courts of this country, both State and Federal.

Republica *vs.* Cobbett, 3 Dall., 467.
Apsden *vs.* Nixon, 4 How. U. S., 466.
U. S. *vs.* Worrall, 2 Dall., 384.
Ormes *vs.* Dauchy, 82 N. Y., 443.
24 Alb., L. J., 220.

Seventh—*It will be remembered that this question is not whether the acts charged in this indictment are crimes, nor whether they are extraditable offenses, but whether they are such as Congress is authorized by the Constitution to punish.*

It is for this reason that the statutes of Germany and other countries making counterfeiting the notes of a foreign bank an offense, have no application.

Similar statutes exist in many of the States of the Union, and all of the States have authority to enact them if they see fit.

This they could not do if the power was vested in Congress.

Eighth—Even if Congress was vested with power to so define the law of nations, as to include within it such an offense as counterfeiting or forging the obligations of an individual foreigner or foreign corporation, it has not done so.

(*a.*) The act of May 16, 1884, simply prescribes a punishment for the offense, but nowhere in that act are the offenses therein described "DEFINED as offenses against the law of nations."

(*b.*) Merely prescribing a punishment for an offense is not DEFINING *it "as an offense against the law of nations."*

Non constat but what the punishment was imposed upon the theory that Congress possessed the power to do so under the clause in the Constitution in relation to counterfeiting "the coin" of the United States.

From anything which appears within the Act of 1884, it is a mere supposition that this punishment was imposed under the power "to define and punish offenses against the law of nations."

But, even if it was imposed under this clause, the DEFINING the crime as a violation of that law *was a condition precedent* to the right to impose a punishment therefor.

Thus, in the U. S. *vs.* Smith, 5 Wheat., 153, where piracy was defined by an act of Congress, as "the crime of piracy as defined by the law of nations," and then a punishment prescribed for it as so defined, the law was only sustained upon the ground that the Constitution expressly mentioned piracy as a crime which Congress was authorized "to define and punish," and that piracy was a crime so settled and determined by the law of nations that a reference to that law was a sufficient definition of it.

See notes to this case, ib., 161.

Thus Judge Story in his opinion in this case, says:

"There is scarcely a writer on the law of nations who does not allude to piracy as a crime of a settled and determinate nature; and whatever may be the diversity of definitions in other respects, all writers concur in holding that robbery or forcible depredations upon the sea, *animo furandi*, is piracy. The same doctrine is held by all the great writers on maritime law, in terms that admit of no reasonable doubt."

This was clearly holding that if there was not a specific definition of piracy the law imposing a punishment for it would be void.

This contention is further sustained by the opinion of Mr. Justice Johnston in the United States *vs.* Pirates, 5 Wheat., 184, 195.

In speaking of the Act of 1790 (1 U. S. Stat., 113,) he says: "It is true that the eighth section declares murder as well as robbery to be piracy, but in my view, if anything is to be inferred from this association it is only that they meant to assert the right of punishing murder to the same extent that they possessed the right of punishing piracy; *which would be carrying the construction beyond what I contend for* * * * * It is obvious, that the penman who drafted the section under consideration acted from an indistinct view of the divisions of his subject. He has blended all crimes punishable under the admiralty jurisdiction, in the

general term of piracy. But there exist well-known distinctions between the crime of piracy and murder, both as to constituents and incidents. *Robbery on the seas is considered an offense within the criminal jurisdiction of all nations.* It is against all, and punished by all; and there can be no doubt that the plea of *antrefois acquit* would be good in any civilized state, though resting on a prosecution instituted in the courts of any other civilized state. *Not so with the crime of murder. It is an offense too abhorrent to the feelings of man, to have made it necessary that it also should have been brought within this universal jurisdiction.* And hence, punishing it when committed within the jurisdiction, or (what is the same thing) in the vessel of another nation, has not been acknowledged as a right, much less an obligation. It is punishable under the laws of each State, and I am inclined to think that an acquittal in this case would not have been a good plea in a court of Great Britain. Testing any construction of this section, therefore, by the rule that I have assumed, I am led to the conclusion that *it does not extend the punishment for murder to the case of that offense committed by a foreigner upon a foreigner in a foreign ship.*

* * * * * *

"*Nor is it any objection to this opinion that the law declares murder to be piracy. These are things so essentially different in their nature that not even the omnipotence of legislative power can confound or identify them. Had Congress, in this instance, declared piracy to be murder,* the absurdity would have been felt and acknowledged, yet with a view to the exercise of jurisdiction, it would have been more defensible than the reverse, for in one case it would restrict the acknowledged scope of its legitimate power, in the other extend it. *If by calling murder piracy it might assert a jurisdiction over that offense, committed by a foreigner in a foreign vessel, what offense might not be brought within their power by the same device?* The most offensive interference with the governments of other nations might be defended on the precedent."

(c.) It therefore follows that as to offenses against the law of nations not enumerated in the Constitution, there must be a specific *definition* of them by Congress as being included in such law, before it can impose a punishment for their commission.

This never having been done in regard to counterfeiting, the act in question is void.

Ninth—Nowhere have the obligations of the law of nations as well as its limitations been more tersely or elegantly expressed than in the celebrated speech of the Hon. John Marshall (afterwards Chief Justice of this Court), in the House of Representatives, on the resolution of the Hon. Edward Livingston, relative to Thomas Nash, alias Jonathan Robins.

This, as is well known, was the case of one of the mutineers at the Nore, and will be found printed as an appendix to 5 Wheat.

"In truth the right of every nation to punish, is limited "in its nature to offenses against the nation inflicting the "punishment. This principle is believed to be universally "true. It comprehends every possible violation of its "laws on its own territory, and it extends to violation "committed elsewhere by persons it has a right to "bind. It extends also to general piracy. A pirate "under the law of nations, is an enemy of the "human race, being the enemy of all, he is liable to be "punished by all. Any act which denotes this universal "hostility, is an act of piracy; not only an actual robbery, "therefore, but cruising on the high seas without com- "mission, and with intent to rob, is piracy. *This is an* "*offense against all and every nation, and is, therefore,* "*alike punishable by all, but an offense which in its nature* "*affects only a particular nation is only punish-* "*able by that nation. It is by confounding general piracy* "*with piracy, by statute, that indistinct ideas have been* "*produced respecting the power to punish offenses com-* "*mitted on the high seas. A statute may make an offense*

" *piracy committed within the jurisdiction of the nation*
" *passing the statute, and such offense will be punishable*
" *by that nation. But piracy, under the law of nations,*
" *which alone is punishable by all nations, can only con-*
" *sist in an act which is an offense against all. No par-*
" *ticular nation can increase or diminish the list of*
" *offenses thus punishable.* * * * All offenses at sea
" are not piracies by the law of nations, *and all indict-*
" *ments for piracy must depend upon the law of nations.*
" * * * No nation has a right to punish offenses
" against another nation, and the United States can only
" punish offenses against their own laws and the law of
" nations. Piracy must be such an act as manifests
" general hostility against the world, and an intention to
" rob generally, then it is piracy; but if it be merely a
" mutiny or murder in a vessel for the purpose of deliver-
" ing it up to the enemy, it seems to be an offense against
" a single nation and not a piracy."

See Appendix, 5 Wheaton, * p. 8.

Tenth—The demurrer to this indictment should be sustained as insufficient in law for the reasons herein set forth.

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